

§ 14-401.13. Failure to give right to cancel in off-premises sales.

(a) It shall be a Class 3 misdemeanor for any sellers, as defined hereinafter, in connection with an off-premises sale, as defined hereinafter, willfully to:

- (1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (2) Fail to furnish each buyer, at the time he signs the off-premises sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in boldface type in a minimum size of 10 points, the following information and statements in the same language, e.g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

(enter date of transaction)

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. In the event you purchased antiques at an antique show and cancel, and your residence is out-of-state, you must deliver the purchased goods to the seller.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram, to

_____ (name of seller)
at _____
(address of seller's place of business)
not later than midnight of _____
(date)
I hereby cancel this transaction.

(date)

(buyer's signature)

- (3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (4) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.
- (5) Misrepresent in any manner the buyer's right to cancel.

(b) Regardless of the seller's compliance or noncompliance with the requirements of the preceding subsection, it shall be a Class 3 misdemeanor for any seller, as defined hereinafter, to willfully fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction. If the seller failed to provide a form Notice of Cancellation to the buyer, then oral notice of cancellation by the buyer is sufficient for purposes of this subsection.

(c) For the purposes of this section, the following definitions shall apply:

- (1) Off-Premises Sale. – A sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "off-premises sale" does not include a transaction:
 - a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
 - b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or
 - c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the

- buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
- d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
 - e. In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or
 - f. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or
 - g. Executed at an auction; or
 - h. Sales of motor vehicles defined in G.S. 20-286(10) by motor vehicle sales representatives licensed pursuant to G.S. 20-287 et seq.
- (2) Consumer Goods or Services. – Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
 - (3) Seller. – Any person, partnership, corporation, or association engaged in the off-premises sale of consumer goods or services. However, a nonprofit corporation or association, or member or employee thereof acting on behalf of such an association or corporation, shall not be a seller within the meaning of this section.
 - (4) Place of Business. – The main or permanent branch office or local address of a seller.
 - (5) Purchase Price. – The total price paid or to be paid for the consumer goods or services, including all interest and service charges.
 - (6) Business Day. – Any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and Good Friday. (1985, c. 652, s. 1; 1987, c. 551, ss. 1, 2; 1993, c. 141, c. 539, s. 282; 1994, Ex. Sess., c. 24, s. 14(c).)